

Summary of Substantive Legislation Related to Aging

North Carolina General Assembly
2008 Session



***Prepared by Staff for the
North Carolina Study Commission on Aging***

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Enacted Legislation

Raise Ceiling on Personal Property Sale/Guardian

S.L. 2008-87 (HB 2390) increases the cumulative amount of personal property the guardian of an incompetent ward or a minor ward may sell, lease or exchange without a court order from \$1500 over the duration of the guardianship estate to \$5000 per accounting period.

This act becomes effective October 1, 2008. (WR)

State County Special Assistance

S.L. 2008-107, Sec. 10.2 (HB 2436, Sec. 10.2) provides that effective January 1, 2009, the maximum monthly Special Assistance rate for residents in adult care home facilities is \$1,207 per month per resident, unless adjusted by the Department of Health and Human Services.

This section became effective July 1, 2008. (TM)

Health Care Facility Construction Project Fee Increases

S.L. 2008-107, Sec. 29.5 (HB 2436, Sec. 29.5) increases the fees the Department of Health and Human Services charges for the review of health care facility project plans and construction to ensure compliance with State law. The section increases health care facility project fees for hospitals, nursing homes, adult care homes, ambulatory surgical facilities, psychiatric facilities, and residential construction projects.

This section became effective July 1, 2008. (SB)

Disabled Veterans and Their Surviving Spouses

S.L. 2008-107, Sec. 29.11 (HB 2436, Sec. 29.11) establishes a property tax homestead exclusion for disabled veterans and their unmarried surviving spouses equal to the first \$45,000 of the property's appraised value. An owner who receives this exclusion is may not receive other property tax relief.

This section becomes effective for taxes imposed for taxable years beginning on or after July 1, 2009. (CA)

Expand Definition of Home Care Services

S.L. 2008-127 (HB 964) increases the annual license fee for home care agencies from \$350 to \$400. Additionally, it expands the definition of home care services to include the following:

- In-home companion, sitter, and respite care services provided to an individual.
- Homemaker services provided in combination with in-home companion, sitter, respite, or other home care services.

The act provides that as used within Part 3 of Chapter 131E, the term "sitter" does not include child care facilities licensed under Chapter 110 (Child Welfare); the term "respite care" does not include facilities or services licensed under Chapter 122C (Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985); and the terms "in-home companion, sitter, and respite care services" are not within the definition of home care services if they are certified by

the Department of Health and Human Services as not providing hands-on care and administered on a voluntary basis.

The section of the act containing the fee increase becomes effective January 1, 2009. The section of the act that expands the definition of home care services becomes effective January 1, 2010. The remainder of the act became effective July 28, 2008. (SP)

Multiunit Assisted Housing Services Registration Fee

S.L. 2008-166 (HB 2409) requires multiunit assisted housing with services (MAHS) programs to register annually with the Division of Health Service Regulation, Department of Health and Human Services, and requires the Department to charge each MAHS program a nonrefundable annual registration fee of \$350. Under the act, any individual or corporation that establishes, conducts, manages, or operates a MAHS program that fails to register is guilty of a Class 3 misdemeanor and upon conviction is subject to a fine of \$50 for the first offense and not more than \$500 for each subsequent offense.

This act becomes effective January 1, 2010. (TM)

Revocation of Drivers License When Person Adjudicated Incompetent

S.L. 2008-182 (HB 2391) requires that when a person has been adjudicated incompetent under the State's incompetency and guardianship laws and the Commissioner of Motor Vehicles is making a determination as to whether the person is competent to operate a motor vehicle, the Commissioner must consider the recommendations of the clerk of court regarding whether the incompetent person should be allowed to retain driving privileges.

This act becomes effective October 1, 2008, and applies to persons adjudicated incompetent on or after that date. (BC)

Nursing Home Administrators Criminal History

S.L. 2008-183 (HB 2397) authorizes the North Carolina State Board of Examiners for Nursing Home Administrators to obtain criminal history record checks of applicants for licensure as nursing home administrators, as recommended by the North Carolina Study Commission on Aging.

Definitions. - The act sets out definitions for the following terms:

- Applicant.
- Criminal history.
- Criminal History Record Check.
- Convictions.
- Denial of Licensure.
- Limited Immunity.

Criminal History Record Check. - The Board must require a criminal history record check (record check) of all applicants, and refusal to consent to a record check may constitute grounds for denial of licensure. Further requirements of the Board are as follows:

- The Board must provide to the North Carolina Department of Justice (DOJ) all of the following:
 - The fingerprints of the applicant to be checked.
 - A form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories.
 - Any other information required by DOJ.
- The Board must keep all information obtained pursuant to this act confidential.

- The Board must collect any fees required by DOJ and remit those fees to the DOJ for expenses associated with the record check.

Convictions. - A conviction of one or more offenses revealed by the record check shall not bar licensure automatically. The Board must consider the following factors regarding the conviction:

- The level of seriousness of the crime.
- The date of the crime.
- The age of the applicant at the time of the conviction.
- The circumstances surrounding commission of the crime, if known.
- The nexus between the criminal conduct of the applicant and the job duties of the position to be filled.
- The applicant's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- The subsequent commission by the applicant of a crime listed in definition of criminal history.

Denial of Licensure. - If the Board refuses to issue or renew a license based on information obtained in a criminal history check, the following is required of the Board:

- The Board must disclose to the applicant the information contained in the criminal history record check that is relevant to the Board's actions.
- The Board shall not provide a copy of the criminal history record check to the applicant.
- An applicant has the right to appear before the Board to appeal the Board's decision. An appearance before the Board shall constitute an exhaustion of administrative remedies in accordance with existing statute.

Limited Immunity. - The Board, its officers, and employees acting in good faith and in compliance with this act will be immune from civil liability for its actions based on information provided in an applicant's criminal history record check.

Criminal history record checks of applicants for licensure as nursing home administrators. - The act authorizes the DOJ to provide criminal histories to the Board of any applicant for licensure as a nursing home administrator. The following guidelines and procedures are established:

- The Board must include in its request to the DOJ:
 - The fingerprints of the applicant to be checked.
 - A form signed by the applicant consenting to the record check and use of fingerprints and other identifying information required by State or National Repositories.
 - Any other information required by DOJ.
- The applicant's fingerprints will be forwarded to the State Bureau of Investigation for a State criminal record check and the State Bureau of Investigation must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
- The DOJ may charge a fee not exceeding the actual cost of locating, editing, researching, and retrieving the information to offset the cost incurred in conducting a record check.

This act becomes effective December 1, 2008. (JC)

Special Assistance/Income Disregard

S.L. 2008-184 (SB 1796) provides that the eligibility of Special Assistance residents residing in an adult care home on and after July 1, 2009, must not be adversely affected due to Social Security, Supplemental Security Income (SSI), Veteran, and Railroad Retirement annual Cost of Living Adjustments (COLAs). The act applies only to cases where Special Assistance income eligibility is affected by Social Security, SSI, Veteran, and Railroad Retirement COLAs and

is not intended to render a Special Assistance recipient eligible if all other eligibility requirements are not met. The act specifies that the maximum monthly rate for these residents must be the same for all other residents according to the provisions set forth in the current Operations Appropriations Act, as amended. The Department of Health and Human Services must apply for the approvals, if any, which are necessary to implement the policy change directed in this act.

This act became effective August 6, 2008.

Note: Also see the summary of S.L. 2008-161 (HB 2410) Special Assistance Income Disregard Study under the Studies heading of this document. (TM)

Certified Retirement Community Program

S.L. 2008-188 (SB 1627) creates the North Carolina Retirement Community Program in the 21st Century Communities of the Department of Commerce to promote the State as a retirement destination. The Program will develop a scoring system to determine which North Carolina communities will qualify as certified retirement communities. Upon certification, the 21st Century Communities will provide staff training and marketing guidance for each community. Communities must seek re-certification every five years by reapplying for the program and submitting data demonstrating the program's effectiveness. The Department of Commerce and the Second Career Center of Robeson County will create a pilot program to implement the Program for the City of Lumberton.

The provisions of this act creating a pilot program in Robeson County become effective October 1, 2008; the remainder of this act becomes effective July 1, 2010. (HF)

Studies

Referrals to Existing Commissions/Committees

Study on the State's Readiness to Respond to Increasing Numbers of Older Adults Residing in North Carolina

S.L. 2008-181, Part IX (HB 2431, Part IX) authorizes the North Carolina Study Commission on Aging to evaluate the State's readiness to respond to the increasing number of older adults residing in North Carolina. In conducting this study the Commission may:

- Identify information and resources to provide needs assessment, planning, and delivery of services and programs to current and future older adults.
- Oversee the design and implementation of a:
 - Consumer Needs, Assets, and Expectations Assessment.
 - State and Local Awareness and Preparedness Assessment.
 - Process to strengthen State and local planning.
- Identify and secure studies of related issues, such as retirement migration patterns, that impact the planning process for North Carolina's older adult population.

The Commission may report its findings with any recommended legislation to the 2009 Regular Session of the General Assembly upon its convening.

This part became effective August 4, 2008. (SP)

Referrals to Departments, Agencies, Etc.

Transport of Individuals in Wheelchair Study

S.L. 2008-121 (HB 93) directs the Department of Transportation to study issues relating to the vehicular transportation of individuals seated in wheelchairs and to report its findings and recommendations to the North Carolina Study Commission on Aging and the Joint Legislative Transportation Oversight Committee by February 1, 2009.

This act became effective July 28, 2008. (BC)

Special Assistance Income Disregard Study

S.L. 2008-161 (HB 2410) directs the Division of Aging and Adult Services and the Division of Medical Assistance, within the Department of Health and Human Services, to study implementation of an income disregard policy for current State/County Special Assistance and Medicaid residents who are adversely impacted due to cost of living or other income increases. On or before October 1, 2009, the Divisions must report findings and recommendations to the Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Appropriations Subcommittee on Health and Human Services.

This act became effective August 3, 2008.

Note: Also see the summary of S.L. 2008-184 (SB 1796) Special Assistance/Income Disregard under the Enacted Legislation heading of this document. (TM)

Study Issues Relating to Hearing Loss in Older Adults in North Carolina

S.L. 2008-181, Part XII (HB 2431, Part XII) directs the Division of Services for the Deaf and Hard of Hearing to study the impact of hearing loss on North Carolina's older adult population. Specific items to be addressed include the availability of qualified professionals for diagnosis and treatment, access to hearing aid purchase assistance programs for low income individuals, development of an inventory of adaptive technologies, and an examination of resources and programs available in other states. The Department must present its findings to the North Carolina Study Commission on Aging no later than November 1, 2009.

This part became effective August 4, 2008. (SP)

Study the Feasibility of Operating a Licensed Adult Care Home in a Public Housing Facility

S.L. 2008-181, Part XIII (HB 2431, Part XIII) directs the Division of Aging and Adult Services and the Division of Medical Assistance, within the Department of Health and Human Services, to study the feasibility and possible savings to the State of operating a licensed adult care home in a public housing facility. The study must determine the following:

- Whether this model is needed to complement the care options currently available to older adults in North Carolina.
- Whether this model is allowable under current State and federal laws and rules and, if not, what changes are needed.
- How State-County Special Assistance and federal public housing subsidies would work together and whether this could result in a reduced State-County Special Assistance rate for these types of entities and possible savings for the State.

On or before August 1, 2009, the Department must report findings and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and to the Study Commission on Aging.

This part became effective August 4, 2008. (TM)

Study Issues Relating to Respite Care

S.L. 2008-181, Part XIV (HB 2431, Part XIV) directs the Division of Aging and Adult Services to study the adequacy of service standards and funding for group respite services and directs the Division of Medical Assistance to study the feasibility of including respite services as part of the Medicaid State Plan. The Department must present findings and recommendations to the North Carolina Study Commission on Aging by November 1, 2009.

This part became effective August 4, 2008. (SP)